BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF CALIFORNIA

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Order Instituting Rulemaking to Implement the Commission's Procurement Incentive Framework and to Examine the Integration of Greenhouse Gas Emissions Standards into Procurement Policies	Rulemaking 06-04-009 (Filed April 13, 2007) * * * * * California Energy Commission Docket No. 07-0IIP-01

COMMENTS OF THE INDEPENDENT ENERGY PRODUCERS ASSOCIATION ON PROPOSED DECISION OF COMMISSIONER PEEVEY RELATED TO AN "INTERIM OPINION ON REPORTING AND TRACKING OF GREENHOUSE GAS EMISSIONS IN THE ELECTRICITY SECTOR"

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Pursuant to Rule 14.3 of the Commission's Rules of Practice and Procedure, the Independent Energy Producers Association (IEP) submits its Comments to the Proposed Decision (PD) of Commissioner Peevey related to an "Interim Opinion on Reporting and Tracking of Greenhouse Gas Emissions in the Electric Sector." The PD presents recommendations that would be forwarded by the Commission to the California Air Resources Board (CARB) for purposes of integration into the implementation of the state's greenhouse gas (GHG) emission reduction goals. IEP has three primary issues that arise from the PD. These issues relate to the following:

1. Methodology for imputing emission factors for unspecified resources;
2. Proposed policy related to firming intermittent renewable resources; and
3. Proposed policy related to new contracts with existing specified sources.

I. THE PD'S PROPOSED METHODOLOGY FOR IMPUTING EMISSION FACTORS FOR UNSPECIFIED RESOURCES CREATES PERVERSE INCENTIVES

The PD raises two fundamental concerns related to the calculation/estimation of emissions from unspecified power resources. The first issue relates to the methodology for imputing an emissions rate for unspecified resources based on an average rather than the marginal unit. The second issue relates to the potential for double-counting resources in those instances in which authoritative entities in regions outside of California make claims for resources to serve that region's load that are inconsistent with California's assumptions.

A. Use of Marginal Emitting Unit Rather Than Average Emitting Unit When Imputing an Emissions Rate to Unspecified Resources

When imputing an emissions rate for power from unspecified resources, the PD generally adopts the approach of using an "average GHG emission factor" associated with unspecified resources in the region from which the unspecified power was generated. The four regions identified include the following: the Pacific Northwest (PNW), including the state of Montana; the Southwest, including the state of Colorado; the California Independent System Operator (CAISO) Market Reform and Technology Upgrade (MRTU) markets (day-ahead/real-time/integrated forward market); and in-state.[1] The PD's general approach is to impute an emissions factor for unspecified resources based on the average emissions of all the unspecified resources in the region (i.e., to calculate an average emissions factor for unspecified resources for the geographic region net of all specified resources). In doing so, the PD creates a perverse incentive for relatively high emitting resources, i.e., those that are higher than the average, to

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[1] Of note, because significant new transmission is being considered to link Wyoming directly with the Southwest and indirectly with California, the PD's omission of the state of Wyoming seems to establish Wyoming as a separate geographic region, although this is unstated in the PD.

cloak their real emissions rate by selling as unspecified resources. For example, the PD imputes an emission rate for unspecified resources in the Pacific Northwest, based on an average, of 714 pounds of CO_2e/MWH. Any generator with an emissions rate that exceeds the imputed rate based on the average will be incented to sell its power as undifferentiated power and get the benefit of the lower average rate. Thus, in this example, Montana coal will be positioned to shield its emissions by selling as undifferentiated power with an imputed emissions rate of 714 pounds of CO_2e/MWH. Thus, the proposed methodology of using the average emissions rate of unspecified power has the effect of (a) aiding relatively higher emitting resources while (b) undermining relatively cleaner resources' ability to take advantage of that fact in the marketplace.

Employing a marginal emitting resource methodology has the following advantages. First, it eliminates the perverse incentive for relatively high emitting resources to cloak emissions through unspecified sales to California. Second, it creates incentives for market participants to be more specific as to where the power bought/sold in California is derived. Third, it helps ensure that the public's perception of the validity of the state's GHG program in terms of fostering relatively low-emitting resources to serve California load is in fact being realized.

Accordingly, IEP recommends that the Commission adopt a methodology for calculating an imputed emissions rate for unspecified resources based on the marginal emitting resource, i.e, the emissions rate associated with highest emitting unit used to calculate/impute a rate for unspecified resources, rather than the average emission rate associated with those same, unspecified resources.

B. Avoid Double-Counting by Deferring to Authoritative Entities Outside of California Regarding Claims of Resources

When calculating the emissions associated with unspecified resources from various regions, the state needs to recognize the reporting standards and claims of other authorized entities in order to avoid the problem of double-counting. The problem of double-counting arose in the context of renewable resources, and the solution was the creation of a region-wide organization (i.e. WREGIS) to provide a means to report, track, and verify claims for renewable purchases. Unfortunately, no such regional organization exists as yet for GHG emission claims. However, the potential problem of double-counting remains. IEP notes that the July 10, 2007 communication from the State of Washington, Department of Community, Trade and Economic Development, Energy Policy Division, to the Commission and California Energy Commission (CEC) raised concerns about the prospect of double-counting in California's proposed methodology. Specifically, the State of Washington stated, "The current methodologies in use by Oregon, Washington, and California result in a good deal of double-counting of hydropower." More importantly, the State of Washington made clear in that letter that "Pacific Northwest utilities claim their hydropower first, leaving thermal for export." While IEP agrees with the Pacific Northwest parties that it is essential that the two regions use a consistent methodology, the formalization of that methodology and the infrastructure to support it (e.g. a regional reporting/tracking system) may take some time. In the meantime, California should recognize and account for the claims made by authoritative entities such as the Dept of Community, Trade and Economic Development for the State of Washington, located in the region for which the calculation/estimation of unspecified power is being made, and defer to their claims in order to avoid the problem of double-counting.

Accordingly, in advance of the development of a region-wide GHG emissions reporting/tracking institution (akin to WREGIS), IEP recommends that in those instances where a proper authority beyond California's boundaries (e.g. governmental entity,

authorized reporting entity, etc.) has declared to California its intent to count certain generation (e.g. relatively low emitting resources) against that region's load, then the state of California should acknowledge and account for this claim when calculating the imputed emissions from unspecified resources in that same region.

II. PROPOSED POLICY RELATED TO FIRMING INTERMITTENT RENEWABLE RESOURCES NEEDS GREATER CLARITY TO PREVENT ABUSE OF FIRMING POLICY

The PD notes that the Commission addressed the firming of renewable resources in D.07-01-039. In that Decision, the Commission adopted limits on the amount of substitute energy purchases from unspecified sources used to firm renewable resources such that the total purchases for firming resources may not exceed the contracted renewable amounts. For purposes of GHG reporting, the PD recommends similarly that "if the total purchase under a renewable power contract is limited contractually to the total contracted-for output of the specified renewable power plant to be sold to the retail provider over the life of the contract, firming power should be attributed the same emission characteristics as the contracted renewable power plant and need not be reported separately." (PD, at p. 22.)

The PD's approach creates additional opportunities for GHG leakage and potentially undermines the integrity of renewable contracting. IEP understands this section to potentially foster an outcome in which unspecified system energy and/or relatively high emitting specified generating resources may be used in place of intermittent resources so long as the amount of that firming energy does not exceed the expected energy from the renewable resource. This proposed language leaves unbounded the amount of firming power from relatively higher emitting resources (e.g. unspecified system power or even power from higher emitting specified resources) that may be used for delivery to California consumers as if it were power from a renewable resource.

IEP recommends that the PD be modified to protect against the incentives that may result by creating an environment in which, for GHG reporting purposes, higher emitting resources, e.g. undifferentiated system power and/or coal, may be used to "backfill" wholly or in part the contractual commitments from specified, intermittent resources at the emissions rate of the renewable resource.

Specifically, IEP recommends the following changes to the protocol regarding the firming of renewable resources.

> ***First, review D. 07-01-039 regarding the firming of intermittent resources to maintain consistency with the California Energy Commission by ensuring that the amount of firming power used to support a renewable resource does not exceed that which can <u>reasonably</u> be expected to derive from that renewable resource. See CEC Revisions to Proposed Regulations Establishing and Implementing a Greenhouse Gases Emission Performance Standard for Local Publicly Owned Electric Utilities [Docket # 06-OIR-1]***
>
> ***Second, (a) if unspecified resources are used to firm the renewable resource, then impute an emissions value for the firming resource based on the imputed value associated with unspecified resources from that specific region, and apply that to the amount of MWhs firmed by the unspecified resource; (b) if specified resources are used to firm the renewable resource, apply the emissions associated with the specified resource, and apply that to the amount of MWhs firmed by the specified resource.***

III. <u>PROPOSED POLICY RELATED TO NEW CONTRACTS WITH EXISTING SPECIFIED SOURCES UNDERMINES THE MARKET AND RAISES LEGAL CONCERNS</u>

The PD states that "in our opinion it is unlikely that new contracts with existing generation sources would produce real reductions in GHG emissions, since most, if not all, of existing power plants would run the same regardless of any new contract." (PD, p. 21.) The PD then recommends that "ARB attribute emissions for purchases from specified sources based on emission factors of the specified source only if (a) the purchase is made through a PPA [power purchase agreement] that was in effect prior to January 1, 2008 and either is still in effect or has been renewed without interruption, or (b) the purchase is made through a PPA from a power plant that became operational on or after January 1, 2008." This provision has the effect of replacing an existing generator's actual, known emissions rate with the imputed values associated with unspecified resources/power purchases, if the existing generator does not recontract with its original off-taker.

IEP is opposed to this recommendation. **First**, this provision raises concerns regarding the restraint of trade. In addition, stripping the economic value of the known/reported environmental attributes associated with these resources raises concerns as to whether this constitutes a taking under the law. The PD's approach has the effect of forcing relatively low emitting resources (i.e. those below the imputed value for unspecified resources) to re-contract with their original off-taker in order to realize the value of its low emissions. Furthermore, it is unclear what emission attributes would be assigned to this power since the PD is silent on this issue, but IEP assumes it would be imputed the value associated with unspecified power as in the case of null power, in spite of clear reporting evidence that the emissions attributes are more positive than the imputed value. **Second,** this provision inappropriately tilts the field against sellers vis-à-vis buyers in the daily marketplace. For example, this provision puts renewable and/or low emitting QFs whose existing contracts are approaching the end of their term at a distinct disadvantage in contract negotiations with the party they are currently contracted with or any other party they may desire to do business with. **Third,** the assumption that a power plant operating under a new contract would run the same as it had in the past, regardless of the contract, is unsupportable. Clearly, contract terms and market economics will dictate how a plant operates. The marketplace illustrates this fact: few, if any, contracts or RFOs are identical; rather, they are continually revised and modified to reflect new, evolving circumstances and product needs.

IEP appreciates the opportunity to comment on the Proposed Decision.

Respectfully submitted this 24th day of August, 2007, at San Francisco, California.

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By *_/s/ Steven Kelly_*
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CERTIFICATE OF SERVICE

I, Melinda LaJaunie, certify that I have on this 24th day of August 2007 caused a copy of the foregoing

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to be served on all known parties to R. 06-04-009 listed on the most recently updated service list available on the California Public Utilities Commission website, via email to those listed with email and via U.S. mail to those without email service. I also caused courtesy copies to be hand-delivered as follows:

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 24th day of August 2007 at San Francisco, California.

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